

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA

JO ANN FONZONE,

Plaintiff,

v.

JOE OTERI, et al,

Defendants.

Case No. 5:12-cv-05726-JLS

Reading, Pennsylvania

December 12, 2018

2:05 p.m.

TRANSCRIPT OF CONFERENCE HEARING  
BEFORE THE HONORABLE JEFFREY L. SCHMEHL  
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiff:

Jo Ann Fonzone

Pro Se

a/k/a Judy McGrath

Coleen F. Middleton, Esquire  
(by phone)

Law Offices of Coleen Middleton

1229 Chestnut Street

PMB 202

Philadelphia, PA 19107

For the Defendants:  
(Kelechewisky, Ortiz,  
Bee, Kovac)

Aaron Shotland, Esquire

City of Philadelphia Law Dept.

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Philadelphia, PA 19102

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Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

1 (Call to order at 2:05 p.m.)

2 THE CLERK: All rise. Court is now in session, the  
3 Honorable Jeffrey L. Schmehl presiding. Thank you.

4 THE COURT: Good afternoon, everyone.

5 MR. SHOTLAND: Good afternoon, Your Honor.

6 MS. FONZONE: Good afternoon.

7 THE COURT: This is the case of essentially Fonzone,  
8 Jo Ann Fonzone, who's present, correct?

9 MS. FONZONE: Yes, Your Honor.

10 THE COURT: And you're representing yourself,  
11 correct?

12 MS. FONZONE: No, I was --

13 THE COURT: Well, you are, but go ahead.

14 MS. FONZONE: No, I retained counsel and I was just  
15 made aware just a short time ago, she couldn't make it here  
16 today. I have her phone number if, you know, if you'd like --

17 THE COURT: Okay, what is her name and phone number?

18 MS. FONZONE: Her name is Coleen Middleton in  
19 Philadelphia, phone number (215) 205-1195. She's available for  
20 the Court today if --

21 THE COURT: Okay, thank you.

22 MS. FONZONE: -- you'd like to --

23 THE COURT: We may call her. This case was filed in  
24 2012. It's the oldest case we have. The Defendants that are  
25 left are Officer Kelechewisky and Officer Ortiz; is that

1 correct?

2 MR. SHOTLAND: Yes, Your Honor.

3 THE COURT: And --

4 MS. FONZONE: Well, I object, Your Honor --

5 THE COURT: Well --

6 MR. SHOTLAND: Ortiz, Bee, Kovac --

7 THE COURT: Oh, and then Officer Bee and Officer  
8 Kovac.

9 MR. SHOTLAND: Yeah.

10 THE COURT: There's four police officers left.  
11 Everybody else has been terminated by --

12 MS. FONZONE: That's not correct, Your Honor. The  
13 operative --

14 THE COURT: Well, that's what the --

15 MS. FONZONE: -- complaint is July 7th of 2015.  
16 There were more Defendants. The fact that they have not  
17 answered because counsel is in denial about them being  
18 Defendants, it's, you know, it's just untrue.

19 THE COURT: Well, Judge Davis' order terminated  
20 everybody else and did not add any defendant --

21 MS. FONZONE: That's not true. The operative  
22 complaint, according to Judge Davis, is July 7th of 2015. I  
23 really need to request a continuance, because I did retain  
24 counsel and she couldn't be here today.

25 THE COURT: All right.

1 MS. FONZONE: I was just notified about a half hour  
2 ago.

3 THE COURT: Counsel, you -- identify yourself for the  
4 record?

5 MR. SHOTLAND: Aaron Shotland on behalf of the  
6 Defendants, the remaining Defendants.

7 THE COURT: Okay, and you work for the City of  
8 Philadelphia Law Department?

9 MR. SHOTLAND: Yes.

10 THE COURT: My understanding is the only claim that  
11 remains is an excessive force claim. Is that your  
12 understanding?

13 MR. SHOTLAND: There's a few claims. It's excessive  
14 force, essentially like a -- an illegal seizure. There's a  
15 couple, but they're all relating to the arrests and the  
16 interaction at the Phillies game of Ms. Fonzone.

17 THE COURT: In the ballpark or outside the ballpark?

18 MR. SHOTLAND: In the ballpark.

19 MS. FONZONE: I was a business invitee, Your Honor.  
20 Again --

21 THE COURT: I understand that. We're not -- we're  
22 trying to -- I want to schedule this case for trial.

23 MS. FONZONE: Well, as I said, I retained other  
24 counsel, because I feel like I'm being, you know, pushed  
25 through and it's unfair to --

1 THE COURT: Pushed through?

2 MS. FONZONE: Yes.

3 THE COURT: This is the slowest case in the history  
4 of the Eastern District.

5 MS. FONZONE: No, well, if, you know, if -- I had to  
6 request many continuances because I'm wearing four hats, Your  
7 Honor. Plaintiff, attorney, victim, witness. I had surgery  
8 on -- major spine surgery.

9 THE COURT: Well, that's only because you either  
10 chose not to get an attorney --

11 MS. FONZONE: That's not true.

12 THE COURT: -- couldn't find an attorney --

13 MS. FONZONE: It's difficult.

14 THE COURT: -- couldn't agree with an attorney --

15 MS. FONZONE: That's not true at all.

16 THE COURT: -- don't have an attorney. You still --

17 MS. FONZONE: And, you know, I strongly object to  
18 this. It's difficult to find an attorney once one attorney  
19 starts a case. I had no knowledge Mr. Bailey was going to  
20 withdraw.

21 THE COURT: You made no attempts to settle this case.

22 MS. FONZONE: I'm not going to be pushed into a  
23 settlement. I was disabled by these injuries, Your Honor,  
24 respectfully. Here's a list of my injuries.

25 THE COURT: Well, why can't the case go to trial?

1 MS. FONZONE: I'm not saying that it can't. I'm  
2 saying --

3 THE COURT: All right, why can't I --

4 MS. FONZONE: -- I retained counsel to help me.

5 THE COURT: -- why can't I schedule a --

6 MS. FONZONE: She could not be here today.

7 THE COURT: -- why can't I schedule a trial for March  
8 or April?

9 MS. FONZONE: I'm not going to schedule anything  
10 without, you know, being able to confer with my counsel, who  
11 was supposed to be here today and unforeseen circumstances. I  
12 was notified like a half hour before I got here.

13 THE COURT: She could enter her appearance.

14 MS. FONZONE: Excuse me?

15 THE COURT: She could have entered her appearance.  
16 She could do that just simply with -- take her two minutes on  
17 the computer. To enter her appearance --

18 MS. FONZONE: She said, you know, she said --

19 THE COURT: -- on your behalf on the record.

20 MS. FONZONE: -- she'd give you her phone number.

21 THE COURT: She could have entered her appearance on  
22 your behalf on the record. All right, let's call her. Dial  
23 the number.

24 MS. FONZONE: Do you want me to dial it?

25 THE COURT: No, we're dialing it.

1 MS. FONZONE: Oh.

2 THE COURT: Court firm -- phones. Going to be on the  
3 record. 1-215-205 -- 1-215-205-1195. All right, do you need  
4 me to repeat it again?

5 THE CLERK: I have it.

6 (Dialing)

7 Hello, this is Judge Schmehl's clerk. We're in the  
8 courtroom. We're going to put you on speakerphone? Okay, hold  
9 on.

10 Okay, are you there?

11 MS. MIDDLETON: Hi, yes, good afternoon.

12 THE COURT: Good afternoon, this is Judge Jeffrey  
13 Schmehl, District Court Judge for the Eastern District of  
14 Pennsylvania. We are here today in the case of Jo Ann Fonzone  
15 versus at least four Philadelphia police officers.

16 It is case 5726 of 2012. This is simply just a case  
17 management pre-trial conference. Are you Colleen Middleton?

18 MS. MIDDLETON: Yes, Your Honor, I am.

19 THE COURT: And do you plan on representing the  
20 Plaintiff in this case?

21 MS. MIDDLETON: I do, Your Honor.

22 THE COURT: All right, that's all I needed to hear.  
23 I will continue this case for at least 30 days or more, but you  
24 are to enter your appearance as soon as possible and then we  
25 will have another conference.

1           Once you have entered your appearance, become  
2 familiar with the case, then you can come up here and meet with  
3 me and Defense counsel.

4           MS. MIDDLETON: I appreciate that, Your Honor. Thank  
5 you very much.

6           THE COURT: All right, is there anything else you  
7 would like to add today?

8           MS. MIDDLETON: Not at this time, Your Honor.

9           THE COURT: Is there anything else you would like to  
10 put on the record, Mr. Shotland?

11          MR. SHOTLAND: The only issue, as I understand that  
12 Your Honor would like to schedule trial, one of the Defendants,  
13 who's no longer a police officer, he's retired, living in  
14 either North Carolina or Florida.

15          I know he suffers from some medical issues. When he  
16 does testify in this case, he will need to testify -- he's not  
17 going to be able to come up and testify live. He's going to  
18 need to testify on video. I just wanted to make the Court  
19 aware.

20          THE COURT: All right, well, the Court will certainly  
21 accommodate him for that.

22          MS. FONZONE: I'd like to reply to that, Your Honor.

23          THE COURT: It's not unusual.

24          MS. FONZONE: I did request in my discovery medical  
25 records of that officer, I think that he's talking about,



1 Kelechewisky, the one that seriously injured and caused me  
2 heart conditions. So I'd like to see those medical records of  
3 him -- of his.

4 THE COURT: All right.

5 MS. FONZONE: They have failed to comply with --

6 THE COURT: You don't need to see --

7 MS. FONZONE: -- any of my discovery --

8 THE COURT: You don't need to see --

9 MS. FONZONE: -- interrogatories.

10 THE COURT: -- medical records. You need a doctor's  
11 report saying he's unable to travel. That's all you need to  
12 see, all right?

13 Has his deposition ever been taken in this case?

14 MS. FONZONE: No, it's going to be, though.

15 MR. SHOTLAND: No, Your Honor.

16 THE COURT: Okay, well, I've got into this case late,  
17 so if your attorney needs another continuance, you know, she  
18 can make the case for it, but I'm not sure when I got this  
19 case, but it's pretty much been sitting around since I got it.  
20 And you know, I want to make some steps towards resolving it,  
21 either one way or another.

22 MS. FONZONE: And the lead Defendant --

23 THE COURT: Towards a settlement or a trial.

24 MS. FONZONE: -- the lead Defendant Joseph Oteri is  
25 in this case, Your Honor.

1 THE COURT: He's not in this case.

2 MS. FONZONE: Yes, he is.

3 THE COURT: Well, it says terminated, June --

4 MS. FONZONE: The operative complaint is July 7th --

5 THE COURT: All right.

6 MS. FONZONE: -- according to Judge Davis.

7 THE COURT: We will review that. We're not going to  
8 argue that now.

9 Ms. Middleton, are you still there?

10 MS. MIDDLETON: I am, Your Honor, and we'll take  
11 steps to get this moving.

12 THE COURT: Okay. Okay, and I will give you all the  
13 reasonable time you need if you enter your appearance.

14 MS. MIDDLETON: I appreciate that very much, Your  
15 Honor.

16 THE COURT: All right, with that being said, I think  
17 we're done for today. We're going to let Ms. Middleton enter  
18 her appearance, and review the file, and file whatever motions  
19 or requests she thinks is appropriate under the circumstances.

20 And then the Court will deal with it, just like it  
21 deals with any other case. So I will set up some sort of  
22 hearing like this in the future and we can discuss the  
23 management of the case at that time.

24 And I intend to schedule a full case management order  
25 at that time, letting in end of depositions and end of motions,

1 pre-trial, a jury selection, and a trial date. All right?

2 Okay, with that said, Court is adjourned for today.

3 Thank you all.

4 MR. SHOTLAND: Thank you, Your Honor.

5 MS. FONZONE: Thank you.

6 MS. MIDDLETON: Thank you, Your Honor.

7 (Proceedings concluded at 2:15 p.m.)

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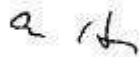
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**CERTIFICATE**

I, Chris Hwang, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

January 23, 2019

Chris Hwang

Date

Transcriber